

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 70 of 1981

in

SPECIAL CIVIL APPLICATION No 1293 of 1977

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not? No. .  
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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?  
No

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ATTAR SEN MITTAL

Versus

Appearance:

MR HB SHAH for Petitioners  
SERVED for Respondent No. 2  
MS KUSUM M SHAH for Respondent No. 4  
(MR HL PATEL) for Respondent No. 5

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE S.D.PANDIT  
Date of decision: 19/06/97

ORAL JUDGEMENT(Per:Thakker.J)

This Letters Patent Appeal is filed against judgment and order dated December 24/29, 1980 in Special Civil Application No. 1293 of 1977.

2. That petition was filed by one Harbanslal Munshiram Sharma for appropriate writ, direction or order quashing and setting aside an order of promotion passed in favour of respondent nos 4 to 7 ( Annexure.E) collectively and for issuing appropriate order directing Union of India and Railway Administration to decide the case of the petitioner for promotion in accordance with law.

3. It was the case of the petitioner that he was appointed as Khalasi class IV employee in 1954. He was promoted to the post of Mechanic Gr.III, Mechanic Gr.II and Mechanic Gr.I. In 1969, he was promoted as officiating Chargeman Grd.II in the pay scale of Rs. 205-280 . At the relevant time, he was working on the said post since more than seven years. The next promotional post was of Chargeman Gr.I. His case was that though he was eligible to be considered for the said post, he was not promoted and respondent nos 4 to 7 who were junior to him were promoted illegally and arbitrarily. The said action was clearly unlawful. It appears that initially there was only one petitioner but thereafter other 28 person filed an application to be joined as petitioners which was granted. Similarly persons who were likely to be affected by the orders passed by the court also made an application to be joined as respondents which was also allowed.

4. The learned single Judge heard the parties and allowed the petition. The operative part of the order

reads thus:

" In the above view of the matter, I hereby direct the Railway Administration that they should regularise the appointments of these petitioners as Junior Chargemen either by the order of regularisation, if it is legally possible for them to do, or by taking some formal selection tests on the basis which was operative at the time of promotional avenue opened for these petitioners in those respective years. The petitioners and others having been thus oregularised,1 they will be accommodated an their quota by following the roaster system. With this direction and clarification, the petition stands disposed of with no order as to costs. Rule can be said to be technically partly made absolute and partly rejected"

5. It is against this order that the present Letters Patent Appeal is filed by the respondents. The appeal was admitted by the Division Bench in 1980. Today when the matter is called out for final hearing, we have heard Mr. H.B.Shah learned counsel for the appellants. Mr.H.L.Patel was appearing for the contesting respondents, but he passed away during the pendency of appeal and today nobody is appearing for those respondents. Ms. K.M.Shah was appearing time for Railway administration earlier but she has stated that now she is also not appearing. Hence we could not get assistance from the respondents. However, Mr. H.B.Shah learned counsel for the appellants fairly placed before us all the facts and circumstances of the case with a view to assist the court.

6. Mr. Shah submitted that while disposing the petition the learned single Judge observed in the judgment that the petitioners were working in Railway Administration since many years. They were promoted to higher posts from time to time. They were made permanent. As Chargemen Gr.II, they had worked for long time on ad-hoc basis, but they were not made permanent. Some of them were even promoted to Chargemen Gr.I again on ad-hoc basis. It was before the learned single Judge that since they filed a petition and challenged the order of respondents nos. 4 to 27, their cases for confirmation and/or further promotion might be delayed and that they may be victimised. Though the learned single Judge observed that such apprehension was not well founded, he held that in peculiar facts and circumstances of the case, such a possibility could not be totally

ruled out. The learned single Judge, therefore, observed that when petitioners had worked for a number of years, it may not be necessary to take any test and their services may be regularised by making them permanent considering their service record particularly when there was nothing against them. The learned single Judge also considered the fact that some of them were further promoted. Hence the learned single Judge stated that if they are not directly regularised, a formal test may be taken and thereafter appropriate order in accordance with law be passed so that they may not be prejudiced.

7. Mr. Shah frankly stated that he does not object to observations made by the learned single Judge. He has also no objection to the direction to consider cases of the petitioners by Railway Administration. He however submitted that at the most, the learned single Judge could have held that taking into account all the facts and circumstances including the one that the petitioners had worked for a long period, their cases must be considered sympathetically by Railway Administration. But the learned single Judge could not have stated that it should be of a formal nature. When Rules are in force governing promotion to higher post, a mandamus could be issued directing the administration to decide cases of the petitioners in accordance with such existing Rules.

8. We are of the view that the final directions issued by the learned single Judge must be considered in their proper perspective. The directions themselves state that "In view of the above matter I hereby direct the Railway Administration that they should regularise the appointments of these petitioners" What the learned single Judge conveyed was that in view of the facts and circumstances mentioned in earlier paras, cases of the petitioners were to be considered. Such a direction can be given by a court in exercise of powers under Article 226 of the Constitution. No direction, however, either to regularise services of the petitioners or to hold only a 'formal' test can be issued. Such is not the power in the court and the authority has to decide the cases in accordance with law.

6. Mr. Shah stated that the matter has become more or less academic since the petition was of 1977. Almost all contesting parties have retired. But in view of the fact that none of the respondents are present in the court, we may clarify that if any of the respondents is aggrieved by our order passed in this Letters Patent Appeal it is open to him and/or to them to apply for review and/or reconsideration of this judgment.

10. It appears that after this Letters Patent Appeal was admitted Cross Objections were filed by petitioners wherein a prayer was made that the learned single Judge ought to have granted prayer of the petitioners in its entirety, directing the Railway Administration to regularise the service of the petitioners. In view of our conclusions that no direction could have been issued and the cases must be decided in accordance with Rules in force, cross objections cannot be allowed directing the Railway Administration to straight way regularise services of the petitioners . Hence, we do not see any reason to grant the Civil Application. Cross Objections are accordingly dismissed.

11. In view of the above discussion this Letters Patent Appeal deserves to be disposed of and is accordingly disposed of with the above observations and clarifications. No costs.

(C.K.Thakker.J)

(S.D.Pandit.J)